

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

MARCUS GORDON, M.D.

Plaintiff,

v.

9 BRANCH STREET, L.L.C., et al.,

Defendants.

CIVIL ACTION NO. 05-11372-MEL

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION
TO DESIGNATE CASE FOR TRIAL BY JURY**

The Plaintiff, Marcus Gordon, M.D. ("Gordon"), hereby opposes Defendants' Motion to Designate Case for Trial by Jury, on the following grounds:

1. The defendants failed to file a timely answer to the complaint;¹
2. The defendants did not seek leave to file their answer late;
3. In their motion, the defendants assert that their failure to make a timely demand for a jury trial was "a result of accident, mistake and misfortune, and not as a result of neglect," but they offer no explanation whatsoever in support of that assertion;
4. The defendants have made no attempt to show to what extent they would have had a right to a jury trial on any of Dr. Gordon's claims if they had made a timely jury demand,

¹ Under Fed. R. Civ. P. Rule 81(c), the defendants were required to answer the complaint either within 20 days after service of the complaint or within 5 days after filing their petition for removal, whichever is later. The complaint was served on June 16, 2005, and the removal petition was filed on June 29, 2005, so the defendants were required to serve an answer on or before July 6, but they did not answer until July 8.

and they clearly do not have a right to a trial by jury on many of those claims (e.g., his claim for a declaratory judgment and his claims under Mass. Gen. Laws, chapter 93A and chapter 12, §§ 11H & 11I);

5. The defendants have offered absolutely no explanation as to why it would be appropriate for the Court to exercise its discretion.

MARCUS GORDON, M.D.

By his attorneys,

/s/ R. Alan Fryer

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE COPY OF THE ABOVE DOCUMENT WAS
SERVED UPON OPPOSING COUNSEL BY FIRST-CLASS MAIL.

8/12/05
Date

/S/ R. Alan Fryer
Signature